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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/804,664 03/12/01 BARAD

J MAT 3C7B

023581 QM32/1022  
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EXAMINER

CEGIELNIK, U

ART UNIT PAPER NUMBER

3712

DATE MAILED:

10/22/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/804,664	BARAD ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Urszula M. Cegielnik	3712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.  
 2a) This action is **FINAL**.                  2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) 1-17 is/are rejected.  
 7) Claim(s) \_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 11) The proposed drawing correction filed on \_\_\_\_ is: a) approved b) disapproved by the Examiner.  
     If approved, corrected drawings are required in reply to this Office action.  
 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.  
 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) The translation of the foreign language provisional application has been received.  
 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4</u> . | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Specification*

The Preliminary Amendment as filed 14 June 2001, includes an amendment to the specification beginning at line 4 at page 1 which recites that the application is a continuation of US Patent Application Serial No. 09183,323. The examiner submits that the application as presented is a divisional of the above-mentioned application. The applicant is requested to make note of this fact and make the necessary correction.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 2, and 4-17 set forth indefinite claim language. Claim 1 sets forth in line 4, "customer-defined identifying material". It is not clear what structure or feature is being encompassed by this recitation. Claims 2, and 4-17 include similar language. Claim 4 sets forth in line 2, "personalized toy". It is not clear what would constitute a "personalized toy". Claims 7, 8, 9, 10, 14, and 17 recite the same type of language. Claims 5 and 12 set forth "customer-defined toy name". Again, for the same reason stated above, it is not clear what structure or feature is being encompassed by this recitation. Similarly, claims 6 and 13 recite "customer-defined intended recipient". Claim 14 further recites "a story relating to the personalized toy". It is not clear what

would constitute a story relating to the personalized toy. Claim 15 recites "tabs configured to support the identifying material on the inside of the flap". It is not clear as to what configuration the tabs must have in order to meet the claim.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Zerbo, Jr..

Zerbo, Jr. discloses a package (container 10) having an aperture (window opening 12); a personalized toy (flowers F) in the package, and what appears to be customer-defined identifying material supported in the package (instruction sheet 18) as recited in claim 1; the identifying material is printed on a document separate from the package as set forth in claim 2; the document is attached to the package by tabs (pocket 15) as required by claim 3; the package has a flap (cover 11) covering the personalized toy and customer-defined identifying material removably attached to the flap (col. 3, lines 6-8) as recited in claim 4; the identifying material appears to include a customer-defined toy name (col. 3, lines 4-12) as set forth in claims 5 and 12; the identifying material includes a customer-defined intended recipient as recited in claims 6 and 13; the flap (cover 11) includes an aperture (window opening 12) as set forth in claim 7; the flap is adapted to be opened to reveal the personalized toy (Figure 2) as

recited in claim 8; a toy support card (rectangular block 22) as set forth in claim 9; a flap (cover 11) having an inside and an outside, an aperture (window opening 12) in the flap, and customer-defined identifying material supported on the inside of the flap (Figure 2) as required by claim 10; the customer-defined identifying material has a front side (Figure 3) and a back side (Figure 1) as required by claim 11; the identifying material (instruction sheet 18) appears to include a story related to the personalized toy as set forth in claim 14; the inside of the flap includes tabs (pocket 15) which appear to be configured to support the identifying material on the inside of the flap as required by claim 15; the identifying material is removable (col. 3, lines 6-8) as set forth in claim 16, and the personalized toy is visible through the aperture when the identifying material is removed as recited in claim 17.

### ***Conclusion***

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Urszula M. Cegielnik whose telephone number is 703-306-5806. The examiner can normally be reached on Monday through Friday, from 8:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jacob K. Ackun can be reached on 703-308-3867. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3579 for regular communications and 703-305-3579 for After Final communications.

Application/Control Number: 09/804,664  
Art Unit: 3712

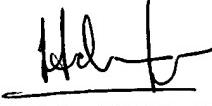
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Urszula M. Cegielnik  
Examiner  
Art Unit 3712

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October 16, 2001

  
JACOB K. ACKUN, JR.  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700